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MEMORANDUM

TO: Superintendents, Principals, and Heads of Schools
FROM: Mark Oettinger, General Counsel
SUBJECT: Information to be Included in School Reports, Handbooks and/or Other Notices
DATE: July 23, 2013

This is the Agency's annual communication, pursuant to 16 V.S.A. § 212(14), in an effort to compile a complete list of information that schools are required under state or federal law to make available to the electorate, community members, parents or guardians, and students. The statutory or regulatory source of the requirement, and whether a particular format or mailing is directed, are provided below. Comments about omissions from, or possible additions to, this list are welcome, and should be submitted to Mark Oettinger, Vermont Agency of Education (AOE) General Counsel, at (802) 828-3136 or mark.oettinger@state.vt.us.

A. Bullying

16 V.S.A. Chapter 9, Subchapter 5 requires all schools (including both approved and recognized schools) to have bullying prevention policies that are no less stringent than the Secretary's model policy. At a minimum, such policies must include:

1. A statement that bullying is prohibited;
2. A procedure that directs students, staff, parents and guardians how to report violations and file complaints;
3. A procedure for investigating reports of violations and complaints;
4. A description of the circumstances under which bullying may be reported to a law enforcement agency;
5. Consequences and appropriate remedial action for students who commit bullying:
6. A description of how the school board will ensure that teachers and other staff members receive training in preventing, recognizing and responding to bullying; and
7. Annual designation of two or more people at each school campus to receive complaints, and a procedure for publicizing the availability of those people and clarifying that their designation does not preclude a student from bringing a complaint to any adult in the building.

The Agency's model bullying policy can be found on the AOE website.

B. Concussion Guidelines and Related Resources

16 V.S.A. § 1431 requires public and approved independent schools to prevent student athletes with suspected concussions from prematurely returning to school-sponsored athletic activities. The Secretary of Education, with input from the Vermont Department of Health and the Vermont Principals' Association, is required to develop and post guidelines and resource materials to educate coaches, youth athletes, and their parents and guardians, about the nature and risk of concussions, the risks of premature participation in athletics after sustaining such an injury, and the importance of evaluation and treatment by qualified health care providers. The law expressly prohibits a coach from allowing a youth athlete to continue participating in a training session or competition associated with a school athletic team if the coach has reason to believe that the athlete has sustained a concussion or other head injury during the training or competition. A coach is not permitted to allow such an athlete to reenter training or competition until he or she has been examined by, and received written permission from, a licensed health care provider to resume such activities.

16 V.S.A. § 1431 was amended this year to heighten these protections, and those statutory amendments will likely result in changes to the AOE concussion guidelines. A task force is working on the action items which are required by the new legislation, but for the moment, the AOE guidelines and resources that have been in place for the past two years remain in effect. They can be found at the links below.

The information in these guidelines and other materials, set out below, must be provided annually to each youth athlete and to the athlete's parents or guardians.

School Athletic-Team Related Concussion Guidelines **PDF**
Appendix A: Resources for Coaches **PDF**
Appendix B: Resources for Students **PDF**
Appendix C: Resources for Parents **PDF**

C. Seclusion and Restraint

The Vermont State Board of Education rules on seclusion and restraint went into effect on August 15, 2011. These rules, linked below, require public and approved independent schools annually, at or before the beginning of each academic year, to inform parents of enrolled students of the requirements pertaining to the use of physical restraint and seclusion, and of the Vermont preference for the use of positive behavioral strategies and supports in order to avoid the use of physical restraint or seclusion to address targeted student behavior.

The Vermont Legislature has exempted active duty "law enforcement officers," who are certified in accordance with 20 V.S.A. § 2358, from the State Board of Education rules on seclusion and restraint. This provision applies to both full-time and part-time state police officers, municipal police officers, sheriffs and constables. The State Board of Education rules still apply to security guards and retired police officers (who are sometimes called school resource officers, but who do not fall within the definition of "active duty law enforcement officers."

With the exception of certified law enforcement officers, persons who impose a restraint or seclusion must report its use to the school administrator no later than the end of the school day, and school administrators must report certain types of restraints or seclusions to the superintendent.

The rules require notice to parents within 24 hours of each use of seclusion and restraint, and afford an opportunity for parents to participate in a review of an incident of restraint and seclusion.

The superintendent (or the headmaster in the case of an approved independent school) must report to the Commissioner within 3 school days if:

1. There is death, or an injury requiring outside medical treatment or hospitalization of staff or student, as the result of a restraint or seclusion;

2. Physical restraint or seclusion has been used for more than 30 minutes; or

3. Physical restraint was used in violation of State Board of Education rules.

Click here for State Board of Education Rule 4500, sample forms, and related information.

D. School Choice

The 2013-2014 school year ushers in a new system of grade 9-12 "statewide" public school choice. See 16 V.S.A. § 822a. On or before February 1st of each year, the school board of each high school must define and announce its capacity limits for accepting students from other schools. The Secretary has developed and posted guidelines to assist high school boards in defining their capacity limits. Capacity may be limited by such factors that include, but are not limited to, the capacity of the school building, availability of teaching staff, class sizes, and other measurable financial impact, but may not be based on the need to provide special education services. The law allows schools to limit the number of outbound students, and allows schools to seek a waiver exempting them from these choice requirements altogether. If the number of students desiring outbound transfer exceeds the school's cap, a non-discriminatory lottery must be implemented in order to determine which students will be able to exercise outbound choice. Students who fail to "win" such a lottery must receive a preference in a subsequent lottery. If the number of students desiring inbound transfer exceeds a school's capacity, a non-discriminatory lottery must be implemented in order to determine which students will be able to exercise inbound choice. Once a student begins exercising school choice, he or she may continue enrollment (without

having to contest the lotteries again) until graduation. The 822a choice student's district of residence does not have to pay tuition to the school in which the student is enrolled. The district of residence may still count the student in its ADM, and the district of enrollment may not count the student in its ADM.

A sending district (the student's district of residence) remains responsible for special education services (as well as technical education costs) for its resident students. The state's superintendents are required to establish and update a statewide clearinghouse to provide information to students about transportation options among the high school districts.

The AOE has produced, and has posted on its website, a series of five guidance documents to assist school and parents in the process. Given the complexity of the process, it is important to meet the statutory timelines, and administrators are encouraged to clearly inform parents of those timelines, so that parents can have meaningful access to this popular and often over-subscribed right.

E. Internet Safety Policies

Schools receiving reimbursements for internet access and internal connection services from the Universal Service Fund (otherwise known as E-rate) must certify that they are complying with the federal Protecting Children in the 21st Century Act, 47 U.S.C. § 254(h). Every school is required to certify that it has a legally-compliant Internet Safety Policy, and must have an online behavior/cyberbullying curriculum in place. That policy must provide for educating students about appropriate online behavior, including interacting with other individuals, or social networking websites, or in chat rooms, and about cyberbullying awareness and response. Although the policy must provide for the development and use of educational materials related to appropriate online behavior and cyberbullying, it is up to the local school boards as to how the schools implement the new curriculum.

The federal law does not offer a formal definition of cyberbullying. In Vermont, both cyberbullying and cyberharassment are prohibited behaviors that may result in discipline of students. Therefore, internet policies and curricula should address both. *See* 16 V.S.A. §§ 11(a)(26), 11(a)(32), 1161a and 1162.

The FCC has published a compliance guide that can be accessed on its website: http://www.fcc.gov/, or via email: fccinfo@fcc.gov.

There is also information specific to this provision on the USAC website at: http://www.usac.org/sl/applicants/step06/cipa.aspx.

F. Flexible Pathways

Act 77 of 2013 expanded the availability of "flexible pathways" for students. This initiative has a number of elements, including the elimination of the age cap for the funding of the "high school completion program," expanded opportunities for "dual enrollment," and a modest initial appropriation for "early college." With a phased-in beginning in November

2105, it also requires the establishment of a personalized learning plan for each student in grades 7-12. While the law does not explicitly require that schools inform the education community of these opportunities, it is certainly best practice that school administrators do so. It is recommended that administrators do so through outreach by guidance offices and in collaboration with career and technical centers.

SCHOOL REPORTS TO THE SECRETARY, PARENTS, AND COMMUNITY

A. Annual Student Performance Results

16 V.S.A. § 165(a)(2) requires that each school report to its community (in the case of a regional technical center, "community" means the school districts in the service region), in a format selected by the school board, the following:

1. Student progress toward meeting standards from the most recent measure taken;

2. Progress toward meeting the goals of the action plan developed for that year;

3. Statistical information about the school or community that the school board deems necessary to place student performance results in context;

4. A description of how the school ensures that each student receives appropriate career counseling and program information regarding availability of education and apprenticeship program offerings at technical centers;

5. Information on dropout and graduation rates presented in a manner designed to protect student confidentiality; and

6. Data provided by the secretary to enable a comparison with other schools, or school districts if school level data are not available, on cost-effectiveness.

B. Status of Educational Support Systems

16 V.S.A. § 2904 requires an annual report from each superintendent to the secretary on the status of the educational support systems in each school in the supervisory union. The report must describe the services and supports that are a part of the education support system, how they are funded, and how building the capacity of the educational support system has been addressed in the school action plans. The report must also include a description and justification of how Medicaid reimbursement funds that were received under 16 V.S.A. § 2959a were used.

This report is in addition to the annual report required of the education support team for each public school in the district, per 16 V.S.A. § 2902(c)(6), outlining the ways in which the educational support system has addressed the needs of students who require additional assistance in order to succeed in school or to complete secondary school, and

on the additional financial costs of identifying and serving students through the educational support system.

C. Measuring Secondary School Completion Rates

Act 44 of 2009 requires each school district operating one or more secondary schools to report to its taxpayers, at the time that school budgets are presented for approval, the school district's progress toward achieving 100 percent secondary school completion.

D. Financial and Other Information

1. 16 V.S.A. § 563(10) requires that a report on the conditions and needs of the district school system, including the following, be provided to the electorate at least ten (10) days before the school district's annual meeting. This report must contain:

    a) Annual reports from each of the following: the superintendent, the supervisory union treasurer, and the school district treasurer;

    b) The balance of any reserve funds established pursuant to 24 V.S.A. § 2804;

    c) A summary of the town auditor's report for fiscal years which are audited by town auditors, as required by 24 V.S.A. § 1681;

    d) A summary of the public accountant's report if it is a year in which the district's books were audited by a public accountant, and notice of the time and place where the full report of the town auditor or public accountant is available for public inspection and copying, as required by 24 V.S.A. § 1683(a).

INFORMATION TO BE INCLUDED IN THE STUDENT HANDBOOK OR OTHERWISE PROVIDED TO PARENTS

The below items are listed in descending order…starting with the requirements that are most clearly set forth in state or federal statute…but also including those items which are advisable to include in some form of notice to parents or students.

A. State Items

1. ***Hazing, Harassment and Bullying***. Per 16 V.S.A. § 570(a), school boards must annually, prior to the commencement of curricular and co-curricular activities, provide to students and their parents or guardians notice of the hazing, harassment and bullying policies and procedures. The notice to students should be in age-appropriate language, and should include examples. It must, at a minimum, appear in any publication of the school district that sets forth comprehensive rules, procedures and standards of conduct for the school. In addition, each school building must identify two designated

employees who are to be available to receive reports of hazing and harassment, and there must be a procedure to publicize their availability. [See 16 V.S.A. §§ 14 (c)(2), 565(c)(1)]

2. ***Comprehensive School Plan for Responding to Student Misbehavior***. 16 V.S.A. § 1161a(a) requires schools to adopt a comprehensive plan for responding to student misbehavior.

3. ***Technical Center Offerings***. 16 V.S.A. § 1541a(b) provides that school boards that maintain high schools must provide the names and addresses of students to its assigned technical center (or technical centers), so that the students may be contacted and notified of technical center offerings.

4. ***Periodic Released Time Courses***. 16 V.S.A. §§ 1052-1053 provide that upon request of a religious group, periodic released time religious education courses shall be included in public school catalogs and listings of course offerings, provided that all such course offerings are identified as given under the provisions of 16 V.S.A. Chapter 24. Whether such provisions are legal under current state and/or federal constitutional analysis is as yet undetermined.

5. ***Periodic Hearing and Vision Screening Guidelines***. Per 16 V.S.A. § 1422, the Commissioner of Health, in cooperation with the Commissioner of Education, is responsible for developing research- based guidelines for students' periodic hearing and vision screenings by school districts and primary care providers. [See also PPRA (20 U.S.C. § 1232h; 34 C.F.R. Part 98) and FERPA (20 U.S.C. § 1232g; 34 C.F.R. Part 99), with regard to parental consent and/or notification.]

6. ***Military Recruitment***. 16 V.S.A. § 563(27) requires school boards to annually inform every student in grades 9-12 and his or her parent or guardian of the right to *opt out* of having the school provide the student's contact information (i.e., name, address, telephone listing) to military recruiters and/or institutions of higher education, pursuant to 20 U.S.C. § 7908(a).

7. ***School Choice***. Under 16 V.S.A. § 563(28), school boards must annually inform students and their parents or guardians of their options for school choice under applicable laws or policy.

8. ***High School Completion Program***. Vermont's High School Completion Program (16 V.S.A. § 1049a) allows an individual over the age of 16 who has not yet earned a high school diploma to request an individual graduation plan in order to obtain a high school diploma. Educational services may be provided by a public or approved independent high school, an approved provider, or a combination of these. School districts shall award a high school diploma to persons who successfully complete their approved graduation education plans.

9. ***School Safety Programs***. Pursuant to the State Board of Education (SBE) Manual of Rules and Policies, every school district receiving federal and/or state funds for

program support must develop a safety program, institute the program, and monitor it to ensure the program is kept current. (SBE Rule 4101) In addition, school districts shall adopt an alcohol and drug policy that is in keeping with SBE Rule 4200 et seq.

10. ***Life-Threatening Allergies and Life-Threatening Chronic Illnesses***. 16 V.S.A. §563(29) requires school boards to assign an employee to annually inform the parents of students with life-threatening allergies and life-threatening chronic illnesses of the applicable provisions of Section 504 of the Rehabilitation Act of 1973 and other applicable federal and/or state statutes and federal and /or state regulations. This includes notice of the provisions of 16 V.S.A. § 1387 that permits students with life-threatening allergies or asthma to possess and self-administer emergency medication at school in accordance with a plan of action authorized and developed under the requirements of this statute. [See 16 V.S.A. § 1387(c)]

On a related note, the 2013 legislative session expanded the ability of schools to possess auto-injectors prescribed in the school's name. Details of how State Board of Education rules will implement this expanded statutory authorization are under discussion with the Vermont Department of Health.

B. <u>Federal Items</u>

1. ***The Family Educational Rights and Privacy Act*** *(FERPA)*, 20 U.S.C. § 1232g, as implemented in 34 C.F.R. Part 99, requires annual notification to parents or eligible students of their rights under the Act. Such notice must include that parents or eligible students have the right to:

    a. Inspect and review the student's records;

    b. Seek amendment of a student's education record that the parent or eligible student believes is inaccurate, misleading, or otherwise in violation of the student's privacy rights;

    c. Consent to disclosure of personally identifiable student information, except as provided in 34 C.F.R. § 99.31;

    d. File a complaint with the United States Department of Education under 34 C.F.R. §§ 99.63 and 99.64 if they believe that the educational agency or institution has failed to comply with Act;

    e. The procedure for exercising the right to inspect and review education records;

    f. The procedure for requesting amendment of the records under 34 C.F.R. § 99.20; and

    g. If the educational agency or institution has a policy of disclosing records under 34 C.F.R. § 99.31(a)(1), a specification of criteria for determining who constitutes a

school official and what constitutes a legitimate educational interest.

An educational agency or institution may disclose "directory information" if the school:

1) Publicly notifies parents or eligible students of the types of directory information that will be released;

2) Informs parents or eligible students of their right to refuse to let the agency or institution release particular or all directory information; and

3) States the period of time within which the parent or eligible student has to notify the school in writing that he or she does not wish to have the school designate some or all of the information about the parent's child designated as directory information.

Per 34 C.F.R. § 99.3, "directory information" is information contained in an education record of a student that would not generally be considered harmful or an invasion of privacy if disclosed. It may include but is not limited to a student's name, address, telephone listing, electronic mail address, photograph, date and place of birth, dates of attendance, current grade level, participation in officially recognized activities and sports, weight and height of members of athletic teams, honors and awards received, and most recent educational agency or institution attended.

The Vermont Agency of Education recommends that schools also include in their annual FERPA notice that parents or eligible students have the right to seek protective action for the student's education records if the agency or institution receives a judicial order or lawful subpoena that would otherwise require disclosure of a student record under 34 C.F.R. § 99.31(9).

2. ***The Protection of Pupil Rights Amendment*** *(PPRA)* PPRA, 20 U.S.C. § 1232h as implemented by 34 C.F.R. Part 98, protects the rights of parents and students in two ways. First, the PPRA ensures that all instructional materials intended for use in connection with any survey, analysis, evaluation, or other research or experimentation program, are available for inspection by a student's parent or guardian. [See 34 C.F.R. § 98.4(a)] Second, it requires schools or contractors to obtain written parental or student consent before requiring a minor student to participate in any such survey, analysis, or research program. Local education agencies (LEA) are required to adopt policies regarding the PPRA, in consultation with parents. In addition, the LEA must provide notification of those policies to parents or eligible students, and the opportunity for the student to opt out, at the beginning of every school year, and within a reasonable time after any substantive amendment to the LEA's PPRA policies.

3. ***Military or Postsecondary Recruiters*** Under 20 U.S.C. § 7908(a), secondary schools must notify parents and students of their right to request that the student's name, address, and telephone number not be released to military or postsecondary recruiters without prior written consent of the parent or secondary student.

4. ***Civil Rights Provisions***
    a. Recipients of federal funds, including education agencies and institutions, are required to make available information regarding the applicability and compliance of the recipient's programs with the nondiscrimination requirements of the Civil Rights Act, as amended. [34 C.F.R. § 100.6(d)] Title VI of the Civil Rights Act of 1964 prohibits discrimination generally on the basis of race, color or national origin. National origin discrimination includes discrimination on the basis of limited English language proficiency. [42 U.S.C. A. § 2000d *et. seq.*, 34 C.F.R. § 100 *et. seq.*] Title VII of the Civil Rights Act of 1964 prohibits discrimination in employment on the basis of race, sex, national origin and religion. [42 U.S.C.A. § 2000e *et seq.*]

    b. Title IX of the Education Amendments of 1972 prohibits discrimination generally on the basis of sex in educational programs or activities receiving or benefiting from federal funds. [20 U.S.C. §§ 1681-1682] The U.S. Department of Education has issued guidance indicating that sex discrimination includes discrimination on the basis of sexual orientation. Recipients must designate a Title IX coordinator and must publish their grievance procedures with respect to discrimination on the basis of sex. [34 C.F.R. § 106.8] Additionally, each recipient must "implement specific and continuing steps to notify…students and parents of elementary and secondary school students…that it does not discriminate on the basis of sex in the educational program or activity which it operates, and that it is required by Title IX not to discriminate in such a manner." The latter section requires publication of this notice in a variety of ways, including in bulletins, catalogs, or application forms. [34 C.F.R. §§ 106.8(b) and 106.9(a)(1)]

    c. Section 504 of the Rehabilitation Act of 1973 [29 U.S.C. § 794] prohibits discrimination on the basis of disability by recipients of federal funds. Section 504 requires recipients to designate 504 coordinators, adopt a grievance procedure [34 C.F.R. § 104.7(a)] and to provide notice to students, parents, employees, unions and professional organizations that the school district does not discriminate in admission or access, or in treatment of employment, or in its programs or activities. This notice must be included in any materials or publications given generally to participants, applicants or employees, and it must inform them of the grievance procedure and identify the 504 coordinator. [34 C.F.R. § 104.8]

5. ***No Child Left Behind Act (NCLBA).*** Local education agencies are required to notify parents in a variety of circumstances. Here are a few of the more significant ones:

    a. 20 U.S.C. § 6311(h)(2)(A)(i) requires local education agencies receiving Title I assistance to prepare and disseminate to all parents an annual "report card." At a minimum, it must contain the number and percentage of schools identified as needing improvement, for how long they have been so identified, and information on how students achieved on state assessments compared to students in the state as a whole;

b. 20 U.S.C. § 6316(b)(6) requires a local education agency to notify parents of children in attendance "promptly" that its school has been identified as a school in need of improvement, with an explanation of what it means, and what will happen as a result, as well as notifying parents of the option for public school choice (where available) and supplemental educational services;

c. 20 U.S.C. § 6311(h)(6) requires notice by a school district receiving Title I funds at the beginning of the school year to the parents of each student regarding the qualifications of the school's teachers. The notice is to include the right of parents, upon request, to obtain information as to whether the child's teacher has met state qualifications and licensing criteria, whether the teacher is teaching under a waiver or provisional license, and what the major of the teacher was in his or her baccalaureate degree. If the child receives services from a paraprofessional, the paraprofessional's qualifications must also be furnished. And, the notice will also contain a statement as to whether the student will be taught by a teacher for four or more consecutive weeks who has not met the federal requirements for "highly qualified teacher." Finally, this notice must also alert parents to their right to obtain information as to the level of achievement of their child in each of the state's academic assessments;

d. 20 U.S.C. § 6312(g)(1) provides that parents of students who are of limited English proficiency must be notified not later than 30 days after the beginning of the school year that their child has been identified as in need of services. The statute contemplates a very specific and detailed listing of information to be provided in an understandable manner to the parents of the child; and

e. 20 U.S.C. § 6318(a)(2) requires each local education agency with Title I schools to "develop jointly with, agree on with, and distribute to, parents of participating children a written parental involvement policy." Again, the required content of the policy is spelled out in great detail in the statute.

6. ***Individuals with Disabilities Education Act (IDEA)*** 20 U.S.C. §§ 1400, *et seq*., as enacted in Part 300 of the C.F.R., requires notice to parents in a variety of ways, including the following:

a. **Section 300.111 - Child Find**: Vermont has policies and procedures in place incorporating IDEA child find requirements, including notifying the public of the availability of special education services for eligible children aged 3 to 21 years. Similar provisions address child find for students from birth to age 3; [SBE Rule 2360.2(l)]

b. **Section 300.503 - Prior Notice**: IDEA requires written notice to a parent of a student with disabilities within a reasonable period of time prior to a school district either proposing or refusing to initiate or change the identification, evaluation, or educational placement of a student, or the provision of a free, appropriate, public education (FAPE) to a student; and

c. **Section 300.504 - Procedural Safeguards Notice**: A notice of "procedural safeguards" must be provided one time per school year, except that a copy must also to be given to the parents:

i. Upon initial referral or parent request for a special education evaluation;
ii. Upon receipt of the first due process complaint in a school year [34 C.F.R. § 300.507];
iii. Upon receipt of the first State complaint in a school year [34 C.F.R. §§ 300.151 through 300.153];
iv. In accordance with the discipline procedures in 34 C.F.R. § 300.530(h); or
v. Upon request by a parent. The contents of this notice must include a full explanation of all procedural safeguards available under the IDEA. [34 C.F.R. § 300.504(c)]

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The reader is cautioned that the various legal requirements of the law that are discussed in this memorandum are subject to change. Therefore, if you are using a hard copy version of this memorandum, you should check the AOE website to ensure that you have the latest version.

Questions or comments may be directed to Mark Oettinger, AOE General Counsel, at (802) 828-3136 or mark.oettinger@state.vt.us.